

**COMMISSION MEETING
THURSDAY, FEBRUARY 10, 2005
AMENDED MINUTES**

Chair Niemi called the meeting of the Gambling Commission to order at 1:30 p.m. at the Red Lion Hotel located in Olympia. She welcomed the attendees and introduced the members and staff present. She announced the appointment of Commissioner John Ellis.

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;**
 COMMISSIONER CURTIS LUDWIG, Kennewick;
 COMMISSIONER GEORGE ORR, Spokane;
 COMMISSIONER ALAN PARKER, Olympia;
 COMMISSIONER JOHN ELLIS, Seattle

STAFF PRESENT: **RICK DAY, Director;**
 NEAL NUNAMAKER, Deputy Director;
 CALLY CASS, Assistant Director-Field Operations;
 DAVE TRUJILLO, Acting Administrator-Licensing;
 JERRY ACKERMAN, Assistant Attorney General;
 GAIL GRATE, Administrative Assistant

Director Day provided some background on Commissioner John Ellis, who has extensive experience in litigation as an attorney, both in private and state practice. Commissioner Ellis was a long-term employee with the Attorney General's Office and recently retired.

Commissioner Ellis responded that he was looking forward to working with the Commissioners, staff, the Attorney General's representatives, and the other stakeholders' on the important issues that come before the commission.

Staff Accomplishments:

Director Day acknowledged Special Agent Bryce Mack, who graduated from the Basic Law Enforcement Academy.

1. Agenda Review / Director's Report:

Director Day reviewed the inserts to the Commission agenda packet. A summary regarding a recent investigation at Silver Dollar in Tacoma that resulted in an arrest relative to a bookmaker was inserted in the agenda packet. The individual was involved in illegal gambling with wagers over \$5,000 in a series of sporting events. The licensee and the surveillance department cooperated extensively with the agency to help identify,

arrest, and make a case on this illegal gambler. Director Day acknowledged the level of cooperation and the expectation that these types of activities are identified and reported to the Commission.

The Legislative Update was added to the agenda packet. After Senate Bill 5287, the table showing financial information from house-banked card rooms was replaced with one that included an additional column providing information on the business status of the card rooms. The Substitute for House Bill 1000 was inserted. The Commission's previous letter and position on past zoning bills was added behind Senate Bill 5591. The final court judgment on the Cascade Food Services case that was before Thurston County Superior Court relating to the Commission's rule was included behind RCW 9.46.120. Two new bills, Senate Bill 5730 and House Bill 1177, were provided behind Other Legislative Issues. Finally, the minutes of the January 13-14 meeting were provided.

Director Day reviewed the agenda for Thursday and Friday, noting there were no staff-requested agenda changes. He reported that the RGA has formally requested to address the Commission on some legislative concerns they have.

Legislative Issues:

SB 5287 – Tax on Card Games

Director Day explained that this bill was introduced to impose a 10% tax on card rooms effective July 2005. The fiscal note estimates that it would raise somewhere between \$36 million and \$40 million for the general fund over each subsequent biennium. The commission was also requested to file a fiscal note and have identified through the course of the enclosed information that, as a result of the additional tax payments, there possibly will be some businesses that will close in that process. Of course if there are business closures, there would be a potential reduction of about \$1.5 million in the revolving fund, which could require probable staff reductions.

Additionally, it is anticipated that local governments will also be filing a fiscal note, identifying the possibility of local tax reductions. That matches the estimated number of businesses the Gambling Commission estimates may be closing as a result of the additional financial burden of the tax. In this case, as this is a tax bill, it has been the Commission's past practice that a formal position on this kind of policy decision would not normally be taken, but remain neutral on the position of taxing or not taxing. Director Day proposed that, if the Commission is in agreement, we appear as needed to provide informational and technical testimony about the Commission's financial impacts and financial information, but not appear for a position pro or con on the tax bill. **Chair Niemi** called for public comment.

Chris Kealy, Iron Horse Casino, reported he had done some basic math around the bill and didn't understand how they came up with \$40 million to the positive side on the fiscal note. Just from the gross receipt basis, a person could come up with \$24 million before starting with the business closure process that the impact would have. Mr. Kealy estimated at least half of the mini-casinos could be in jeopardy of closing or readjusting

their hours. He counted the negative impacts on the cities and the Gambling Commission in the range that Director Day stated, including the loss of jobs. Mr. Kealy pointed out that the Commission doesn't necessarily pay attention to all of those elements, but mostly looks at the regulatory end of it. He felt the information that comes out of these meetings and the information the state is utilizing to make the decision, is impacted by this decision. Mr. Kealy hoped the Commission realizes the impact that it will have on businesses like his.

Dolores Chiechi, Recreational Gaming Association, commented that they are very concerned about this legislation. The RGA has been consistent in its push for the Gambling Commission reports to include the actual financial health of the card room industry. The gambling reports continue to present a skewed picture of the health of the industry, which is where we've come up with the 2002 Governor's tax proposal. Ms. Chiechi reported that they had managed to kill the 2002 Governor's tax proposal by showing how many businesses would go under and how many employees would lose their jobs. Now we have Senator Prentice's proposal this year. The cities have increased taxes, because they see the Gambling Commission's quarterly reports, including the projections used in the figures in the gambling reports, as well as the media reports on the wealthy card room owners, and think everybody's net income is way up there. Perhaps these perceptions could have been prevented with more conclusive financial information presented in the Gambling Commission's reports. Ms. Chiechi stated that the fiscal note the Commission put forward, thankfully, includes the big picture information. The numbers show in parenthesis the number of losses – according to that fiscal note there are 33 clubs currently operating a business at a loss. Not a lot of people provide investment monies to continue a business that provides no return on their investment. Ms. Chiechi thanked Ms. Hunter for using the reports that provide a more comprehensive look at the stability and survivability of the industry because they paint a clearer picture for the legislature. She pointed out that the perception is that card rooms can afford this additional tax at the state level, that they do not pay any taxes to the state. Ms. Chiechi clarified that the card room industry pays 1.5% of their B & O tax to the state on their gambling receipts. Their members also pay property taxes and sales tax on their revenues, equipment, and supplies, plus they pay taxes on their employees. If this tax is implemented, there would be 59 of the 83 operating at a loss and 22 not operating at a loss. Ms. Chiechi hopes that the legislature takes that into consideration. It could put about 2,184 employees out of work, reduce local tax revenues by about \$110,520 per quarter, and reduce the monies paid to the state for those mentioned above. All of this is estimated at about \$20 million by the Department of Revenue's fiscal note to help plug a budget shortfall of about \$1.6 billion. Will the \$20 million be enough to plug the hole in the local budgets that are left by the reduction in the local taxes they are currently getting from these businesses paying taxes to the local governments. Ms. Chiechi stated that the RGA has been supportive of the Gambling Commission's efforts to prevent and educate the Legislature on the rate of funds from the Gambling Commission's budget. The RGA has been vocal about the strength and the integrity of the Gambling Commission. Will the Gambling Commission be vocal and help educate Legislators and others that the quarterly reports do not reflect the full operation of this industry – other than the small

disclaimer at the bottom of the reports. Ms. Chiechi stated they are thankful that the fiscal note showed the big picture, that the financial audit information not included on the website was included in the fiscal note. She concluded by urging some action by the Commission in helping educate Legislators on what the bill means to this industry.

Max Faulkner, Nob Hill Casino, and representing some of the smaller mom and pop casinos, commented that most licensees already pay multiple taxes on their businesses and gambling activities and felt this would be like paying the B&O tax twice. Mr. Faulkner asked the Commission to take a stance against this tax issue.

Commissioner Orr encouraged the audience to take the same information they provide to the Commission to the Legislative Committees. He stressed the importance of letting the Legislators know the impacts. **Chair Niemi** recommended that the Commission stand available to answer any questions that the Legislature may have about how the agency works. **Director Day** confirmed that the information used to build the Commission's fiscal note came from financial reports that portrayed the entire business, as reported in those financial reports. The Commission passed a rule that will eventually allow the agency to move to an updated report. The report will always be one year behind, with an expanded ability to access that information. It applies internal accounting expertise to estimate the number of businesses that may have the potential to close. There are a number of licensees that are currently reporting in the red, raising the question to most people on how they are continuing to operate the business in the red. Director Day felt the Commission's goal was to provide the Legislature with factual information reported by licensees and received and processed in the agency. He understood the Commissions' direction was to continue to provide factual, technical information to the Legislature, to the extent available to the agency.

HB 1000 – Special Meetings

Director Day advised this is a substitute bill that he provided for informational purposes only. It provides more flexibility in the notice of special meetings, allowing the use of email and fax.

HB 1031/SB 5037 – Problem Gambling

Director Day referenced the status update on the problem gambling bills. Both bills have been before the Commission and their position was in support of the concept. Concerns were expressed about Section 9 because it may create an unfounded liability for the Commission. We followed through with testimony to that effect with both the Senate and the House. The bills await Executive Action at this point.

SB 5591 – Zoning

Director Day explained this was the new version of the zoning bill, which the Commission previously considered. This version is called zoning, but it actually addresses the local authority to prohibit. The statute allows local authorities to completely prohibit a gambling activity in their jurisdiction or to allow the gambling activity. There have been past bills to address this issue. This bill is much longer than

the bills from previous years. Director Day referred to the letter in the agenda packet from the Commissioners to then Chair Honeyford of the Commerce and Trade Committee dated February 24, 2004, referencing House Bill 1667 which addressed this particular zoning issue. He reported that this bill has the sponsors and that the drafters of this bill have worked very hard to address the issues, including those that were of concern to the Commission. To that effect, the bill requires any partial bans by the cities to be a part of the comprehensive plan. There were concerns of the Commission that this would be more of a short-term process that could possibly be connected to either favoritism or similar types of issues. This bill would require the cities and counties to prepare it as part of a long-term planning process, including explaining and writing their Comprehensive Plan. If a city designates the gambling zone, all similar zones would have to be designated the same. The bill does not allow new conforming uses or variances. One of the Commission's past concerns had been the potential for favoritism because of the related corruption issues that brought this whole section about in the first place. To a certain extent, features of this bill start to address that issue. Another concern was the potential for the Commission to be drawn into legal action, but it appears the bill grants the Commission immunity, limiting the legal issues directed to the Commission. The bill also provides a means for the public to challenge a prohibited zone, depending on the size of the zone and if it disproportionately affects minority or low-income residents. This addresses another area of concern to the Commission regarding concentrated gambling areas, where the cities or counties could concentrate or locate gambling in one area. It allows a local jurisdiction to protect sensitive areas like churches and schools, with the same restrictions allowed under the liquor codes. Local authorities would not be allowed to change the scope of the license.

Director Day pointed out that there is a lot of competing interest, which include cities and counties interested in addressing the issue. On the other side, however, the bill does allow grandfathering of existing locations. Essentially, cities can provide an area that is zoned to be non-gambling use at the time and they can grandfather it. They can't allow new gambling non-conforming uses, but they can continue to allow existing locations. Which gets back to the issue that the Commission has been concerned about all along as to carving out one exclusive use or one licensee that might have a favored position over others. Because the bill will allow cities to move from total prohibitions to partial prohibitions and allow development of gambling in certain areas, it could result in an unintended expansion of gambling licenses in areas of the state where they currently are not allowed. The language is fairly complex and portions of the bill are very difficult to understand. As a result, the previous concerns of the Commission about interpretations and people quarreling over what the bill actually means will probably intensify if the bill passes and is implemented. The Commission has over the past few years taken a fairly consistent position in support of the existing law. And in light of the recent Appellate Court decisions, that law clarified the cities authority to either not prohibit or to prohibit entirely and removed a great deal of the questions and interpretation of that section. The Commission is now in a position where it can change or modify its past position or continue to support the existing statute as it was designed and put in place under the laws when the Commission was created in the 70s.

Chair Niemi reminded the Commission members that a vote was taken on previous bills like this and their position had been that the current law they were operating under was appropriate. She pointed out that they were opposed to changing the law at that time for many of the reasons Director Day mentioned. Commission Niemi suggested that they may want to vote on whether to change their past position and asked for comments from the Commissioners. **Commissioner Parker** asked Assistant Attorney General (AAG) Jerry Ackerman whether it would be possible for the drafter of this bill to accomplish their purpose without amending the Gambling Act. Can it be done as it was proposed before – as a free standing bill that impliedly or directly amends the act without putting it into the Gambling Act itself. **Mr. Ackerman** replied that he didn't think it would be possible because the Gambling Chapter is given preemption in the law to the extent that it addresses locations and scope of licensing. It does impliedly and, to some degree, specifically preempts other laws. Since zoning laws are a type of general law, the two portions of 9.46 that deal with the preemption of local control would require some type of amendment if any attempt is made to dilute the Commission's power as it is currently constructed. Mr. Ackerman commented that he interpreted this proposal as something that changes the scope of the Commission's authority because it alters the scope of the authority local jurisdictions currently have. Local jurisdictions currently have the choice to either ban all activities of a certain type or not to ban - there is no middle ground. **Commissioner Parker** asked what the local jurisdictions role would be under this proposal. **Mr. Ackerman** responded that he thought it would create an ability to zone for gambling that does not currently exist. It is a very complex bill and Mr. Ackerman said he didn't fully understand it, but that his overall impression was that, in terms of its legal effect, its uncertainty could create the potential for litigation in an attempt to construe what it actually means. Mr. Ackerman regarded it as a very ambiguous piece of legislation that will invite litigation. He read from section 3 subsection 3e the provision that "the Commission is immune from any action challenging or enforcement of an ordinance enacted or amended under this section or section for this act." Mr. Ackerman commented that this was an issue he raised with the drafter of the bill and was concerned that the Commission wasn't really insulated from litigation. The immunity provision gives immunity from an action challenging the adoption or enforcement of an ordinance. Mr. Ackerman predicted that the Commission would be sued but it wouldn't be on the basis of a challenge to the adoption or enforcement of the ordinance. The Commission would be sued based on their decision to issue or not issue a license, which is a very different matter. The licensing decision would be made based upon the Commissions interpretation of the local ordinance and Mr. Ackerman feared they would end up in court on these lawsuits.

Commissioner Orr made a motion seconded by **Commissioner Parker** to retain the Commission's current position and oppose SB 5591. **Commissioner Parker** added that the public policy is still at the base of this proposal and as was addressed during the last session of the legislature is still the policy position. He supports the existing law with its all or nothing provision because it has the advantage of being simple and straight forward. It allows the Commission to play its role as was intended in the first instance,

and nothing appears to have changed that would change the Commission's position. **Chair Niemi** called for public comment before taking a vote on the motion.

Dolores Chiechi, Recreational Gaming Association (RGA), reported they have been involved with discussions on this issue since 1998 and have been getting tossed back and forth. Thankfully, the RGA is involved in the task forces, work groups, and staff meetings where this language has been discussed. Ms. Chiechi reported that their board voted to oppose Senate Bill 5591, primarily because of the grandfathering provisions, which should be included in any zoning language. The Board felt the language could actually impede members or licensees from changing anything within their building. If new activities were authorized in the future, a licensee may be allowed to continue business in that location but not authorized to operate those new activities. Generally speaking, the RGA has had discussions with the Association of Washington Cities to come up with something that may work, but it doesn't look promising. The Legislature doesn't seem excited about making changes to the existing statute, and we will probably be dealing with this issue for years to come.

Director Day said he would like to recite briefly some of the elements he heard relative to the Commissioners to ensure the Commission doesn't go in the wrong direction as we proceed to document this. The motion is to oppose the bill and support the existing law, which is simple and straight forward. **Chair Niemi** requested Director Day begin by repeating Mr. Ackerman's position that this bill is worse than previous ones and the concern about the Commission being sued. **Director Day** believed that Mr. Ackerman felt the current proposal has very uncertain legal effects and that the Commission is in jeopardy of legal action – to be sued for licensure not over the ordinance. Director Day added that the Commission believes the existing authority provides local governments sufficient authority to accommodate necessary zoning, including set back requirements, etc. He asked if the Commission wanted that information included in any future letters. **Chair Niemi** affirmed, adding that if Director Day is called upon to testify on this bill, the two appellate decisions should be mentioned. **Chair Niemi called for a vote to be taken on the motion. *Vote taken; the motion passed unanimously.***

HB 1045 – Gambling Account and HB 1036 and SB 5073 – Operating Budget

Director Day reported that HB 1036 and SB 5073 were Governor Locke's Operating Budget Bills. HB 1045 proposes to move the Commission from a nonappropriated account to an appropriated account. The Commissioners have testified against the bill. Director Day explained that the Commission has outlined its position both on the transfer of funds from the Commission's account and the issue of moving to an appropriated account in the letter that was sent to Governor Gregoire. Director Day proposed that the Commission take a position opposing these three pieces of legislation and could follow the position that was outlined in the letter to Governor Gregoire. **Chair Niemi** called for public comments.

Dolores Chiechi stated that the RGA also testified in opposition to House Bill 1045, which would change the Commission to an appropriated account, stating that the RGA

firmly believes that the Gambling Commission should remain separate and apart from political influence. Ms Chiechi added that with regard to the revolving funds and the budget issues she felt that the perception of the licensees was that their fees are higher than what was needed for regulation and enforcement because there is excess money in a revolving account that can be put into the General Fund. Ms. Chiechi's concern was how to assure licensees that the fees that are charged are at a commensurate level to what is actually needed to regulate and enforce gambling activities and how the RGA could assist in educating legislators about future raids of these funds.

Commissioner Ludwig made a motion seconded by **Commissioner Parker** to oppose House Bill 1045, House Bill 1036, and Senate Bill 5073. *Vote taken; the motion passed unanimously.*

SB 5439 – Background Checks on Gubernatorial Appointees

Director Day explained that Senate Bill 5439 would allow background checks, which would include the Commissioners. **Chair Niemi** stated that she was personally offended by this bill. No vote was taken.

RCW 9.46.120 – Preventing Charities from Operating Commercial Stimulant Activities

Director Day reported that the section of the RCW that the legislation is proposing to amend is RCW 9.46.120. What you have before you came out of the last Commission Meeting involving the Cascade Food Services case. The Commission had a rule in place that prevented a charitable/nonprofit licensee from owning or operating a house-banked card room. That rule was declared invalid by the Superior Court in Mason County (the court decision has been included in the agenda packet for your reference). At the last Commission Meeting, staff was directed to develop a legislative proposal fortifying the position of the Commission that a licensee could not have both a charitable/nonprofit license and a house-banked Card Room license. With the assistance of Mr. Ackerman to ensure that we comport with the current statute, this proposal incorporates that language. Essentially it states that no bona fide charitable/nonprofit licensee and their members or employees that take any part in the management, operation, or management of the gambling activity authorized by the Commission under RCW 9.46.0701 may take part in the management, operation, or ownership of any commercial gambling activity authorized by the Commission under RCW 9.46.070(2). **Director Day** stated that we have sponsors and the proposal is ready. If the Commissioners desire to continue forward, we should be able to drop this bill on the Senate side and, hopefully, on the House side tomorrow.

Chair Niemi called for comment.

Commissioner Parker asked Mr. Ackerman to elaborate about the court's opinion that concluded that our rule was in conflict with statute. **Mr. Ackerman** explained that he was not the counsel that handled this case in Superior Court, but has read the order that the court issued and some of the pleadings. In a very general way, the court said that the

statute RCW 9.46.120, as it currently exists, contemplates that this Commission will exercise its discretion in whether to allow someone that has a management or operational interest in a charitable/nonprofit organization to also have a management or operational interest in a house-banked card room. The Commission had previously enacted a rule that took that discretion away – it was a blanket “thou shalt not” and also included the concept of ownership, so management or operational ownership was precluded. If a licensee managed or owned a business that would operate gambling as a charitable/nonprofit, it was precluded from obtaining a license and offering gambling as a house-banked card room. When that rule was promulgated, this Commission had substantial discussion and Senator Winsley and Senator Prentice expressed their views that the Legislature had intended to have that separation between charitable/nonprofits and commercial gambling establishments. The Commission voted and decided to have a mandatory separation. The court ruled that the discretion is there by statute and the Commission is required to exercise it. Moreover, ownership is not one of the criteria, just management and operation. The Superior Court Judge invalidated your rule and returned the matter to the Commission for a licensing decision based upon the statute and that does not take into consideration the invalidated rule. What has been drafted by staff, and with my consultation, is an amendment to the statute that would, in effect, put into statutory form the rule you enacted three or four years ago.

Commissioner Ludwig asked whether the Commission needs to take action regarding the order “This matter is therefore remanded for further proceedings consistent with this final judgment.” **Mr. Ackerman** responded that he didn’t believe that was required and that he understood the effect of this order was to return it to the licensing decision stage. What occurred at the Administrative Law Judge level earlier was a decision that was based upon the Commission’s invalidated rule. In other words, the ALJ looked at it and said that if the ALJ had to apply the Commission's rule, it states there is a blanket prohibition for a charity to also have a commercial gambling license. Therefore, there is nothing the ALJ could do except uphold the decision to not grant the license. But a decision hasn’t been rendered at the ALJ stage and Mr. Ackerman was not sure a decision was ever made by Commission staff based upon the other criteria that are set out in the statute – management and operation. Mr. Ackerman believed this should be returned to staff with the application, which should be examined anew to see if it meets the criteria of the statute. If a decision by staff resulted in a denial of a license, then the applicant would have the opportunity to challenge that decision.

Chair Niemi commented that after reading the proposed bill and talking with Ms. Hunter, there were changes made to the bill that caused her to be uneasy. Chair Niemi said she personally believed that if the underlying statute states that the Commission can exercise its discretion, she is far more comfortable exercising discretion than getting into something like this bill – so as far as agreeing with this bill, Chair Niemi didn’t agree with filing. **Commissioner Ludwig** agreed and added that he was concerned with using pending statutory language, which may never be passed, as a basis for denying the application. He reminded himself and everybody else that he was a strong believer that a charity has exclusive authority to run bingo, and he felt they shouldn't be able to do both.

Commissioner Ludwig stated that if someone wanted to be a commercial card room owner, they could do that – but not while they are running charitable/nonprofit bingo games. Commissioner Ludwig was troubled that the pending legislation could be used as a basis for denying the application. It was remanded to the Commission stating we had no authority to deny the application because the applicant was a nonprofit bingo operation. If there are other legitimate reasons to deny, fine, but Commissioner Ludwig didn't think future pending legislation should be used as a reason to deny.

Commissioner Parker read it differently and thought the issue was that the Judge said the Commission could exercise its discretion in a uniform way. In other words, the Commission can say to every applicant that comes before them that it is our discretion to deny this because we still believe that it is the policy that is the basis for the denial. If we put our discretion in the form of a rule, the Judge has said that is an invalid exercise of our discretion. **Mr. Ackerman** affirmed and added that he wasn't sure it was clear earlier. He wasn't suggesting that anyone can use this potential legislation in a license application decision process. Clearly when the Commission begins to once again reevaluate the license application that has been remanded to you, the Commission must make that decision based only on the statute that exists not on something that may come into existence later. Mr. Ackerman said that if he mislead Commissioner Ludwig, he apologized. Mr. Ackerman added that the Commission currently has discretion, but it is limited in that it deals only with people or applicants that have, or seek to have, a management or operational interest to different types of gambling licenses. The question of ownership does not exist in the current statute, which was what the Commission tried to add to the regulation, and that was declared invalid. Keep in mind when you discuss exercising discretion that the reasons for the exercise in your discretion has to be stated and it can't be arbitrary and can't be capricious. If every one of these is going to be looked at on a case-by-case basis and the Commission decides to deny a charitable/nonprofit licensee's application to have a commercial gambling license, a non-arbitrary, non-capricious reason for that denial will have to be stated. Mr. Ackerman was not sure at this point what criteria the Commission was going to apply, but recommended they keep in mind that they will be called upon to explain why the license was being denied. He suggested that a simple, "I will never approve any license for a charity to get a commercial gambling license" would be an arbitrary and capricious decision.

Chair Niemi remembered a YWCA not too long ago that couldn't make it, although they had many members and employees to take part in the management, operation, or ownership. It is confusing – does "may take any part in any management, operation, or ownership of a commercial gambling" mean members or does it mean employees who take part in management, operation, or management. It's hard to figure it out and it's pretty restrictive. **Mr. Ackerman** agreed it is restrictive and explained that it was written in that manner to stay consistent with the rest of the section it was added to. Mr. Ackerman thought a fair meaning would be that members and employees who are active in the operation and ownership would be prohibited, but it wouldn't prohibit all members – a social member would take no part in the management, operation, or ownership of the gambling activity. **Chair Niemi** asked Mr. Ackerman where in the rule it takes out the

Commission's authority to be flexible. This local Superior Court said that we had authority in the rule to use our discretion, so where is discretion removed?

Commissioner Ludwig said it seemed to be a question of the "eye of the beholder." In other words, the Commission sees it as an act of discretion to adopt the rule, and the Judge is saying that when that rule was adopted, the Commission gave away its discretion. Commissioner Ludwig felt you could reasonably see it both ways. **Mr. Ackerman** thought the answer to Chair Niemi's question was in the sentence right above the insertion – the Commission's discretion is embodied there, where it says “no person who takes part in the management or operation of any such gambling activity” (referring to the preceding sentences) “shall take any part in the management or the operation of any gambling activity conducted by any other organization or any other branch of the same organization unless approved by the Commission.” That’s the discretion that’s entrusted to you and that is where the judge had a problem. Mr. Ackerman said he noticed this had been amended, that there used to be a “provided” following that period. He wasn't sure why the word "provided" disappeared, but it was intended to key you into the fact that it changes the preceding sentence or the thrust of the preceding sentence. **Director Day** thought that the word "provided" came out when it went into the drafting process, but didn't think it was actually staff drafting. Director Day clarified that part of the reason the Commissioners decided that they should bring this issue to the legislature was the intense feelings of the ex-officios that there was a separation between the two – nonprofit and for profit. The two weren't suppose to interconnect when it came to gambling. Director Day remembered that as the discussion continued and as the Commissioners debated it, an issue remained – was the legislative intent or purpose to create those two separate domains. This piece of legislation would provide that, if in fact the bill was successful and went through. If the bill fails, the Commission is in a much better position to move forward. **Mr. Ackerman** clarified that there would be no intention to not process a license application while we wait for a bill one way or another. Up to this point, the Commission’s rule has said that charitable/nonprofit applicants, would not be eligible for a house-banked card room license. That rule goes away with the Judge's decision, so if we continue to process each application under the court's decision, it will open up for more house-banked card room licenses that weren't there before. Mr. Ackerman suggested the Commission consider whether to ask the legislature to answer the question, “is this the policy for the state that you want?” That has some merit to gain an answer from the legislature.

Chair Niemi commented that at that time this came up the Commission was shown a picture of a bingo place with a building next to it that said casino. The Commission thought that it was not very good to have a nonprofit in the same building as a casino; even if they were in separate parts of the building and renting from each other. She asked if the Commission's discretion allowed them to disapprove of that without passing a bill like this? **Mr. Ackerman:** responded that it was the dilemma that the Commission will be placed in. You have to give reasons that aren't arbitrary or capricious if the Commission is going to attempt to operate under the current statute. The language that is here will achieve the separation, if that is what you want. If you want to try to adjudicate these on a case-by-case basis and are confident that you can articulate non-arbitrary and

non-capricious reasons for your decisions then you should not support going forward with the bill. **Commissioner Parker** commented that he was concerned that once the door was opened, as the Judge's decision has done, to allow co-ownership, a charitable licensee would also be able to get a commercial license and vice versa. Commissioner Parker didn't think that was a direction he would support. Commissioner Parker didn't think Mr. Ackerman's comment about having a policy to deny those licenses was a tenable position either. It then becomes automatically an arbitrary reason if the Commission routinely says we are doing this because we have a policy. Commissioner Parker stated that he would be in favor of asking the legislature to address this question, but questioned why the Commission couldn't amend this rule to put the term "provided" back in. He suggested striking the "however" and adding "provided" so it becomes one sentence, which is a better way to present this to the legislature. **Mr. Ackerman** affirmed that the language could be returned to the way it was. **Chair Niemi** asked whether it was better to take out employees or members and word it as anyone who takes part in management, operation, or ownership – or possibly even removing the word ownership. She didn't think that they would want to include employees or members because it seems to assume that these are large organizations. If that is what we want the statute to say, it could mean that no one can put any money into a for-profit business if they run a nonprofit, even if they have nothing to do with the for-profit business. **Mr. Ackerman** responded that the real issue is going to be principally the one of ownership, but it is a policy decision. **Director Day** commented that if there is a clear desire to make that separation between charitable/nonprofit and commercial, it's important to have the language that's included in here, with the qualifier that follows it with the involvement in the management or the operation. That way it is not just any member, but is restricted to those who are involved and would separate the charitable from the commercial. Director Day recommended that if the Commissioners decide to go forward with this that we lobby the code reviser to reinsert the word "provided". He encouraged leaving the language in there relative to the members and the qualifier after members and employees.

Commissioner Ellis asked Mr. Ackerman if the Attorney General's Office had considered appealing the decision. **Mr. Ackerman** affirmed it had been discussed within the office, but it was felt that the type of discussion that has taken place today needed to take place. Mr. Ackerman felt there was a reasonable basis for the Superior Court Justice's decision, and recommended that the Commission could and should address this. **Chair Niemi** stated there are many charitable/nonprofit organizations (some 51C3s, many not 51C3s) who own for-profit organizations and put the money into their nonprofit or their own pocket, as the case may be. Chair Niemi said it appears the only reason the Commission can deny these are because they have to specifically deal with gambling, and she didn't think there was enough in it that deals specifically with gambling. **Mr. Ackerman** agreed, explaining that the reason it is permissible legally is because gambling is a proactively regulated industry, and starts with a constitutional statement that all gambling in this state is illegal and then we make exceptions. Mr. Ackerman went on to say that it's like a number of other things, like hazardous waste management.

The government has significant police powers and since the amendment is an amendment to the Gambling Chapter, it could be construed in that manner.

Commissioner Orr pointed out that on lines 8 and 9 it states "and their employees" in parenthesis, but on line 17, it is worded as "their members and employees." If this becomes wordsmithed as badly as we fear, it should read the same. Commissioner Orr added that if the Knights of Columbus in Father O'Malley's Church has a bingo hall and one of the Knights also owns a card room, he could be in conflict. **Mr. Ackerman** referred Commissioner Orr up one line to Section 7 where "member" is included as part of the concept, not in parenthesis.

Bob Tull, speaking personally and not on behalf of Cascade Food Service, admitted he didn't know much about this bill. He testified that his involvement with the Commission went back to 1985 and he was unaware of the problem with charities wanting to do other gambling activities. Charities very rarely want to get involved in high risk activities. This bill appears to make it impossible for certain people who happen to make an honest living as a licensee of this Commission to not be able to participate in the activities of charities. Mr. Tull felt that the real issue in this matter was whether it would be appropriate for this Commission to surrender discretion. The ownership issue is not currently invested in the statute, so to make sure that the Commission could control all of facets, ownership might be added as one of the regulatory factors. Mr. Tull said it sounds to him like the Commission would simply bail out completely and would in effect make charities different, without any parameters, without any history, etc. He added that the topic of co-ownership was compared to co-location and reminded the Commission that co-location is something that has nothing to do with the ownership, which could be at a completely separate facility. Co-ownership could overlap, and Mr. Tull urged the Commission to not rush forward with this bill. The Commission can always do rule making and, if necessary, propose a very surgical correction to the rule so that your regulatory discretion is that what you want it to be. Mr. Tull felt it was clear that this matter is not quite ready for prime time.

Commissioner Parker asked Mr. Tull if, after hearing Mr. Ackerman's discussion regarding impacts of this court's decision in terms of our future acts of discretion, he thought his client would want to come back before the Commission and resubmit their petition, expecting that the Commission, based on the Court's decision, would have to grant it? **Mr. Tull** responded that one of the difficulties is that the license is granted only after all of the capital investment has been made and all the work is done involving the remodel and the security. Mr. Tull felt it was a result of procedural history, which may or may not be a bad thing, but which puts this organization, and perhaps others, into a very untenable situation. He did believe there was an intention to proceed once again for licensure. The question of location has to be readdressed by this organization, in addition to other investment issues. Mr. Tull said he plans to advise them to offer to work with the Commission to some extent on determining what types of ownership issues and overlap issues must be avoided to prevent any regulatory concerns from coming into play. **Commissioner Parker** referred to Mr. Tull's comment about policy reasons that

haven't been articulated, adding that the Commission's previous reference to Senator Winsley's and Senator Prentice's opinion about not having the ability to blur the line and allow charities to own card rooms and vice versa was a matter of public policy. Commission Parker thought those policy arguments have to do with a conflict of interest and that the ability to operate a charitable license is essentially a privilege. **Mr. Tull** disagreed that the "paraphrase of a paraphrase of a recollection of a testimony" that we use here is not an articulation of public policy. It is an opinion expressed by legislators whom I represent or have great affection and respect for. But they weren't articulating public policy, they were giving their personal opinions. The public policy of this state is articulated in RCW 9.46 and it says this Commission should exercise discretion when it comes to overlapping management and operations. It did not articulate public policy that concerned overlapping ownership. For example a charity could own a share of stock in a company that had a license for gambling, which probably doesn't offend anyone from a regulatory standpoint. If the management blurs things to where you can't keep track of where the money is then that ought to be the cause for un-licensure and prosecution and other things. But there is this vast spectrum, which is where this Commission operates, that is used in determining what the key issues and the things that matter from a key issue standpoint are. Mr. Tull thought the public policy right now is clearly articulated in the statute; that it addresses management and operation and does not in any way, shape, or form suggest that ownership is in and of itself an item of concern. **Mr. Ackerman** said he would have a slightly different view from Mr. Tull's regarding what this Commission's role is as articulated in RCW 9.46. Mr. Ackerman indicated line 12 in the proposed legislation, which is the sentence above the proposed insert, reads, "no person who takes any part in the management or the operation of any such gambling activity" (which is referring to charitable/nonprofits above) "shall take any part in the management or operation of any other gambling activity conducted by any other organization or any other branch of the same organization unless approved by the Commission." Mr. Ackerman thought that language was intended by the Legislature to indicate that there would be this separation. The wording "unless approved by the Commission" was obviously included in the language, and clearly the judge felt that it was a mandate for the Commission to utilize discretion. But the way that sentence is worded states a presumption that the Commission won't have this mingling of charitable gambling and for-profit gambling.

Chair Niemi asked whether this bill was needed. **Mr. Ackerman** responded that the issue that will confront the Commission if changes aren't made to the existing statute is not one of whether a licensee puts in the proper security systems and does all the things they have to do to get licensed. The issue that will give rise to the Commission having to make a decision will be whether the licensee maintains management or operational interest in both types of licenses. The Commission will have to exercise that sort of discretion to say that no charity can have a commercial gambling license. Another interesting dynamic, which is purely your policy call to make, is that only certain organizations can become charitable or nonprofit organizations, and they have certain gambling activities, like Bingo, that are set aside for them. If you begin to allow charitable/nonprofit organizations to also hold commercial gambling licenses, you will

create a situation in which charities can become part of the full-service gambling supplier, but most commercial card rooms will not qualify to become charitable/nonprofit organizations and they will not be able to operate the games that are set aside for the charities. **Chair Niemi** asked why the Commission couldn't just keep saying no, as they have done in the past. **Mr. Ackerman** replied that they can keep on saying no, but that it would have to be based on an overlap in management and operation. Ownership couldn't be used as a criteria, plus you would be required to articulate a non-arbitrary, non-capricious reason for saying no. **Commissioner Ludwig** asked, as a follow up to the last question, would charities have the right to do this when non-charities couldn't? And carrying this one step further, if a person owned a commercial property, could they sell part of it to a nonprofit/charitable corporation? **Mr. Ackerman** explained that the question that would come before the Commission would be whether this constitutes management and operation in both licensing schemes, and if it does, will the Commission exercise discretion to allow it to happen. **Director Day** thought it was important to clarify that the Commission did have a policy on this matter as reflected in this rule, up until the Superior Court decision.

Commissioner Parker asked whether this issue could be addressed by putting aside this proposed language and simply striking "unless approved by the Commission" from the existing language. **Mr. Ackerman** affirmed that it might work, adding that this is not the best worded section of law. Presumably, if the Legislature struck the words, "unless approved by the Commission" they would be intending to make a change, understanding the historic way the Commission had interpreted the statute. It isn't as specific as amending it in a manner that the proposed bill does, but it might work. **Mr. Ackerman** commented that it still doesn't address the ownership issue, just management and operations, but if you are satisfied that this is as far as you want to go, then that might achieve it. If you are trying to prevent the overlapping ownerships, which was part of the goal that enacted the rule that was struck down, you won't get that by simply striking that language. **Chair Niemi** thought it was a very good idea. **Commissioner Parker** suggested addressing their concerns in a letter to the Legislature explaining the situation.

Rick Newgard, Seattle Junior Hockey Association, speaking on behalf of himself, commented that not being not an attorney, a lot of the discussion went over his head. But being in the industry for 27 years, he remembered when the card rooms first came in, when there was a lot of unknowns out there. **Mr. Newgard** stated that the card room industry has worked very hard to become a part of the community and have become a very good business model for other states. He added that they have proven themselves to be very good community neighbors and businesses. **Mr. Newgard** said he was at a loss as to why a nonprofit couldn't own a legitimate business, which is going to put money back into the community into junior athletics or the girls clubs, etc. Here is an opportunity for some nonprofits who have been in the industry for numerous years to possibly get into this venue and to put money back into the community. **Mr. Newgard** reported that he was a bit frustrated that there may be a way to get the opportunity for some of the nonprofits to put something back into the community on a larger scale, yet they are not going to be afforded that opportunity. **Mr. Ackerman** commented that he

was glad Mr. Newgard testified because that is exactly the argument he expects the Commission will hear when called upon to exercise their discretion on whether to allow a charity to have a commercial gambling license.

Don Kaufman, Big Brothers and Big Sisters in the Northwest out of Spokane, explained that he didn't know whether his organization would have any interest in a card rooms, per se, but something he heard earlier bothered him regarding a picture of both a casino and a bingo hall in one building that Chair Niemi mentioned earlier. That situation exists in at least two locations in this state. Mr. Kaufman felt that whether they own a card room or not, charitable/nonprofits certainly have a right to rent facilities owned by other operations. He added that he thought the Commission would have a hard time not licensing a legitimate card room owner under a nonprofit's roof as long as all of the aspects of their licenses exist. Whether or not we happen to be the owner, we can certainly be the landlord. Mr. Kaufman saw that as a very viable possibility for those charitable/nonprofits looking for other income for their operation. He said you don't take care of one problem by solving the other one – it still exists.

Norman Patton, Spokane Valley Foundation, reiterated what Mr. Newgard said. Nonprofits are able to run other businesses in the general nonprofit world that aren't as regulated as the Gambling Commission. He reported that they are in a shrinking industry and are looking for other revenues. Mr. Patton stated that they are in a unique position of not having as many restrictions on how they use the money for their charitable activities as some other nonprofits. For example, Spokane Valley Foundation stepped forward a month ago with the Spokane Transit Authority to relieve transportation for 211 handicapped individuals to go to and from work, daycare centers, etc. The Foundation has a pool of funding from the gaming industry they can reach into and spend according to their regulations. Does the Foundation want to do a card room? If it's available they might think about it. The decision would weigh heavily on whether it would put more revenue into their charitable activities. Right now the Foundation is looking for funding to run their transportation program, which is a needed program, and it is getting a lot of press on it. If the money can't be found, the program will have to be closed down. Card room activity, whether it is a nonprofit or for profit, is a marriage that can pour money into a community. Would it fit with our Foundation? We are business people; we are in the business to make a profit that we turn back into our community. Mr. Patton felt that the Commission had been talking around the subject for some time and agreed with some of the other speakers that he didn't think it was ready to go up to the capital. He stated that he would not like to prejudice nonprofits from card rooms if the only reason is simply that you don't like it.

Commissioner Parker commented that he appreciated the testimony that's just been given because it shows there is a basic disagreement on the issue of gambling as an activity that the state needs to regulate in a manner that we have been regulating it. He said that he didn't doubt the sincerity of the witnesses nor the record of their organizations as doing good work. Commissioner Parker added that, if he were in their position, he would also want to be able to generate more revenue for the organization to

command the good work that can be done, especially given today's difficult economic situation. But it comes back to the issue of gambling and the nature of gambling. It is a very extensive record that justifies that it might be the only way that the state can treat it – as a distinct type of activity that calls for the relation that we are engaged in.

Commissioner Parker made a motion seconded by **Commissioner Ludwig** that the Commission send a letter to the Chairs in the Legislature explaining some of the conversations and concerns, and citing the Superior Court case. *Vote taken; the motion passed unanimously.*

Director Day asked whether the letter would be signed by the Chair or the Director. **Chair Niemi** responded that the vote was unanimous, so all the Commissioners will sign it.

Director Day explained that the following two bills are included primarily for informational purposes. They could have some impact, but neither requires action by the Commission.

Senate Bill 5730 increases the requirements and frequency of the small business economic impact statements and the Commission was requested to file a fiscal note. It adds a more extensive review process on impacts and requires a comprehensive review every five years. If the commission is going to properly apply this statute, it would require adding FTEs. We aren't asking the Commission for a particular position, unless you desire to take one.

House Bill 1177 is referred to as the Permit Bill of Rights, and requires that applicants be informed of the minimum and maximum time for decisions, as best as we can determine. The Commission already complies with the conditions of this bill, so there should be no impact on the Commission.

Director Day concluded the Legislative Section of the Director's Report. **Chair Niemi** called for a recess at 3:30 p.m. and reconvened the meeting at 3:40 p.m. (Commissioner Parker stepped out of the meeting during the break and returned at the beginning of the Executive Session.)

Correspondence:

Director Day noted that, as requested by the Commissioners, a letter was sent to Governor Gregoire on January 20, 2005, outlining the Commission's concerns regarding the Gambling Revolving Account and Governor Locke's proposed Budget and transfer to the General Fund. Director Day commented that he had requested and received an opportunity to meet with the Governor with a representative team from the Commission. Commissioners Ludwig and Bricker, Jerry Ackerman, and Director Day met with the Governor's staff on January 31. Director Day felt the meeting was successful in raising the awareness of the Commission's concerns and he believed we will be successful in resolving our issues.

Director Day explained that the letters to Senator Kohl-Welles and Representative Conway dated January 21, 2005, were relative to the Problem Gambling Bill and were previously addressed.

Director Day referenced the draft of a letter regarding Senate Bill 1529, amending the Indian Gaming Regulatory Act. We have been able to confirm that the bill did, in fact, die last session. Since it is not now necessary for the Commission to communicate in writing, Director Day recommended that the Commission not move forward with that letter.

Charitable/Nonprofit Response to January Staff Report

Director Day reminded the Commission that previously they had selected eight different steps to be taken relevant to charitable/nonprofit licensees in the state. Last month we reviewed the statement of policy and how the adjusted cash flow and significant progress process worked. The concept is for the Commission to work their way through all the various recommendations, staff analysis, and comments from the public and licensees, then return and decide what can be done differently as we move forward. After each staff report, the Commission would allow the licensees and charitable/nonprofits time to respond to that report on any issues that they felt might be important. This month we have the second in a series of reports from Terry Westhoff, who will discuss the recommendations dealing with the financial statements. After comments from the public relative to last month's report, Terry Westhoff will give his presentation.

Rick Newgard, Washington Civic & Charitable Gaming, commended Agent Terry Westhoff for a job well done on the presentation provided last month.

Financial Reviews of Charitable/Nonprofit Licensees

Special Agent Terry Westhoff reported that he would be discussing financial reviews of the charitable/nonprofit licenses. In last year's charitable/nonprofit studies, it was recommended that the agency audit those charitable/nonprofit licensees with over \$500,000 in gross receipts. This was the topic chosen by the Commissioners in the October Charitable/Nonprofit Session. It was unclear in the study whether Ms. Sally Perkins was referring to all revenues of \$500,000 and over or just gambling revenues. Gross gambling receipts will be used for this presentation because information is not collected on non-gambling revenue for all charitable/nonprofits. A substantial change would have to occur to change this information for all revenues for charitable/nonprofits.

Mr. Westhoff explained that WAC 230-08-122 covers the requirements for financial statements for charitable/nonprofits. Those charitable/nonprofits with gambling gross receipts over \$3 million are required to submit financial statements prepared by a CPA. These financial statements do not need to be audited nor does the CPA need to be independent. Those licensees with gross receipts between \$1 and \$3 million must submit internally-generated financial statements that do not have to be prepared by a CPA. Those under \$1 million do not have to prepare or submit financial statements, but all charitable/nonprofits are required to submit a quarterly or annual activity report. All

financial statements submitted to the Commission must be in accordance with Generally Accepted Accounting Principals (GAAP), which are national standards for financial information to assure at some level the consistency of that information. It allows us to compare information between organizations or even within the same organization from year to year.

Mr. Westhoff explained the CPA engagement types: Compilations, Reviews, and Audits. "Compilations" are the lowest level of CPA engagements and basically take the organization's financial information and put it in the proper format. No insurance is provided with regard to the information being in accordance with GAAP. It is the cheapest level of review, costing between \$2,000 and \$5,000. Mr. Westhoff reported that he had contacted about seven CPA firms in the state that have prepared financial statements for a charitable/nonprofit and received this range in cost. The difference in costs can be due to the region; for instance Seattle may be more expensive for an audit and review than in Yakima. Cost can also vary by the type of firm; usually national large firms are more expensive than small local firms. "Reviews" are the middle level of the review process. There are some tests performed, providing some level of assurance provided on the statements. They are more expensive than a Compilation and less expensive than an Audit. "Audits" provide the highest level of assurance. They involve more extensive testing of financial information and a reasonable assurance that the information is in accordance with GAAP. Audits are more expensive ranging from between \$5,000 and \$15,000.

Mr. Westhoff reviewed some potential advantages to charitable/nonprofits from an audit. Many large donors require audits to ensure they are contributing to well run and legitimate charitable/nonprofit organizations. Audits may provide assistance in developing or improving internal controls that will help the organization safeguard its assets from theft or misuse. A CPA may point out some efficiencies in operations that may help improve the organization's bottom line. Also, the CPA may point out regulatory issues to help the organization in its voluntary compliance with the Commission. A CPA may also point out some problems with the organizations tax exempt status that could help them. Some disadvantages with Audits are that they can be expensive and time consuming, especially for the smaller charitable/nonprofit organizations. Although an Audit gives reasonable assurance, but there is no 100% assurance that all the information is correct.

About 31 charitable/nonprofit licensees are required to submit financial statements and 20 are required to submit CPA prepared statements. Mr. Westhoff pointed out that those 31 organizations constitute nearly 85% of all bingo receipts in this state. A vast majority of organizations required to submit financial statements opt for the Compilation, which is the lowest level of review. However, it is interesting to note that although 11 organizations could submit internally-generated statements only 2 actually do. The other 9 submit CPA-prepared statements. Many charitable/nonprofits have their own internal requirements. For instance, many national and state organizations, such as Big Brothers/Big Sisters and Elks Clubs, require outside CPA engagements in either Audits

or Reviews. Many also require their chapters to undergo internal financial audits, such as the Moose Clubs. There is also a Federal requirement for organizations receiving federal funds of over \$500,000 to have Audits, such as Yakima Valley OIC.

The items the agency obtains as part of the financial statement submissions are the auditors report, the financial statements conducted by a CPA showing the type of audit or review, the opinion of the CPA as to the occurrence and compliance with GAAP, and any major concerns of the CPA. The basic statements, the balance sheets, the income statements, and factual statements are also in the report, as well as a breakdown of gambling activities by each activity and a breakdown of the functional extent of the program activities and the supporting services. These assist our staff in calculating the significant progress based on the reserve requirements that we talked about last month. In disclosure notes, called significant accounting information, more detail is included about particular numbers in the statement. They include details about how they depreciate their assets and additional information about the organizations investments or financing. With these statements, staff can determine compliance, significant progress, and the accuracy of the financial information on the activity reports, during the annual qualification review process. Financial statements are also used for some elements of the program reviews conducted on the larger charitable/nonprofits (those over \$1 million).

Program reviews

are performed on an average of about every four to six years and include in-depth reviews of the charitable/nonprofit's financial records, observations of the organizations programs to ensure they actually exist and that the organization is operating for its stated purpose as provided in its mission, and interviews with program recipients, board members, and program employees.

Mr. Westhoff explained some considerations from staff's perspective when deciding whether to require audits or lower the threshold to \$500,000. Lowering the threshold could increase the number of licensees required to submit to as many as 48 from the current 31. As of June 30, 2004, 38 organizations are over the \$500,000 threshold; however, the rule is based on the organization's fiscal year end and 48 organizations are within about \$82,000 of that \$500,000 threshold. This would result in an increase of staff workload at a time where reductions are occurring in the budget. It would also increase regulation in those smaller gambling operations that constitute about 15% of all gambling gross receipts. Staff already conduct a significant number of reviews surrounding financial information of charitable/nonprofits. These organizations receive program reviews, qualification reviews, and financial statement reviews. All charitable/nonprofits could receive compliance modules, which include reviews of financial records. Field inspections could include anything from a spot inspection that would include a cursory review of financial records, to financial inspections involving more in-depth reviews of financial records, plus cursory reviews of quarterly activity reports for any anomalies or errors in the reports that we receive. From a standpoint of qualification reviews and program reviews, staff has found little significant difference in problems noted in Compiled, Reviewed, or Audited statements in the context of staff determining excessive reserve, significant progress, and other financial requirements. The agency has defined

what program, supporting services, and other expenses can be used for allocation of expenses, in addition to having specific rules for the calculation of adjusted cash flow, significant progress, and excessive reserves. Rules are in place with regard to the organization and how it must account for its records and for keeping audit trails and on board member activities. This ensures that the charitable/nonprofit organization can voluntarily comply and helps ensure the quality of the financial information we receive, whether it is Compiled, Audited, or Reviewed. More problems are encountered with the internally-generated financial statements we have received over the years because they have usually been completed by an in-house employee with little or no accounting experience. They are often not presented in accordance with Commission rules or GAAP and usually include incomplete submissions and misallocations, requiring staff to spend more time getting the internally-generated statements in compliance. Another consideration is that Audits may be cost prohibitive for smaller charitable/ nonprofit organizations. Audit fees are between \$5,000 and \$15,000 on average and about 13 organizations currently have net income of \$50,000 or less resulting in about a 10% decrease in net income for these organizations.

The rules simplification streamlining processes may change many of the current rules, including potentially reducing regulation requirements for charitable/nonprofits. If there are significant reductions, that may increase the staff need for Audits. Mr. Westhoff contacted the states Ms. Perkins referred to in her study as having a similar regulatory profile to Washington State. Of the five organizations contacted, none required Audited financial statements nor the depth of review required in Washington State. As a matter of fact, only Washington requires CPA preparation for the full charitable/nonprofit organization. Minnesota requires some type of CPA review on only the gambling operation.

In conclusion, the Commission already has substantial reporting requirements for our charitable/nonprofit organizations and we have several levels of reviews that we perform in gambling and program activities to ensure the organizations are bona fide charitable/nonprofit organizations. Mr. Westhoff felt one rule change requiring CPA independence for charitable/nonprofit financial submissions would be beneficial. As the rule is now written, an in-house employee who is a CPA could control the financial records and prepare the financial statements, resulting in possible misuse or theft of assets. It would require the smaller organizations to submit financial statements prepared by a CPA.

Chair Niemi requested Mr. Westhoff to explain in one sentence the kind of changes this would mean. If the Commission were to do as he suggested, which is require all financial statements for organizations over \$1 million in gambling gross receipts to be prepared by independent CPAs, what would he eliminate, what would he include, and what difference would it make. **Mr. Westhoff** responded that there are only two organizations right now that submit internally-generated financial statements. Even though most of the organizations are not required to hire independent CPAs, all of them do. The only impact would be on those two organizations that generate internally-

generated financial statements. **Chair Niemi** asked what Mr. Westhoff would take out of what we have been doing in the past. **Mr. Westhoff** replied there is nothing right now that he could see changing. There has been some discussion about the quarterly activity reports changing to either semi-annual or annual, but that is about the only change. There could be more changes as the rules simplification process begins.

Commissioner Orr pointed out that of the two that prepare internal financial statements, one of them has the second highest percentage of net income of all the organizations, and wondered if that possibly had anything to do with the lack of cost of having to pay for an Audit. In dollars and cents it isn't that much, but the percentage of net income is second highest in the state. Why would we want to ask them to do something differently when they seem to be doing a heck of a job? **Mr. Westhoff** explained that his recommendation would increase the cost to the organizations of about \$2,000 to \$5,000, but would improve the accuracy of the information the agency receives.

Director Day thanked Mr. Westhoff, adding that steps that might improve what we have now are designed to ensure we have consistency and to preserve that consistency with outside audits by increasing the checks and balances to provide verification and protection for the charity. Next month, Mr. Westhoff will have a presentation showing the Commissioners how various combinations may work if applied in Washington. Three recommendations from that report will be consolidated: Charitable/nonprofit industry standards, limiting salaries, and criteria for appropriate allocation of experiences. (Amy Hunter joined the meeting)

Rules Simplification Project Plan Update Presentation

Beth Heston, Project Manager, reported that the survey of stakeholders, project plan, reordering of the entire WAC title into new chapters, finalizing the order of reorganization, and scheduling the rewrite have been completed. We sent 1500 surveys to external stakeholders and received 39 completed surveys, a response rate of about 2.6%. Internally, we received a much better response rate of 35% (63 completed of 180 staff). The external stakeholder survey has been continued in the agency newsletter. Those attendees at this morning study session were informed that the surveys will continue to be accepted and compiled for as long as they continue to be sent. The project plan was written as a historical document and was included in the agenda packet. It was prepared to be used as a game plan for how we are going to go through the processes, as well as an assessment tool for the schedule set. It is also a promise to our stakeholders that we are going to be perfectly transparent in what we are doing. The new title chapters are the odd numbers that that weren't used before and the numbering system will continue to be a 3-digit section number. The first chapter is schedule to be presented to the Commission on June 9, 2005. A small group of subject matter experts has been formed from within the agency, plus we plan to include an external stakeholder in that group to help us with the technical difficulties. The subject matter experts are people who are committed to the excellence of communication, are willing to put that in writing, and rewrite those where substantive changes to the rules are secondary to the plain

language. The last chapter is scheduled to be presented to the Commission on September 14, 2006, which is within the two-year plan.

2005-07 Budget Implementation and Reorganization

Neal Nunamaker, Cally Cass, Julie Lies, and Dave Trujillo

Director Day explained that the Commission approved a budget that contained a significant amount of reduction package, which in 2005-07 alone it would be about 20 FTEs. The next presentation will briefly update the Commission regarding our progress in implementing that budget. Director Day pointed out that at the end of the presentation, we have included reduction rule packages for the Commission's consideration of whether you want to change direction or eliminate the requirement to reduce that level of work from the staff and FTEs.

Deputy Director Neal Nunamaker explained what the agency has tried to accomplish, what it has accomplished to date, and what is planned next. Primarily we are trying to accomplish a mission to protect the public and make sure that gambling is legal and honest; efficiently use our resources by following our vision of anticipate, innovate, and excel; and live our values of integrity, professionalism, respect, and diversity. We also want to create an organization with clear lines of control and responsibility, and train and empower our employees with unity and purpose. Mr. Nunamaker pointed out that in June the Commission approved a change within the Fiscal Year 2005 budget that included a number of reductions, plus some additions and some changes in revenue. Within the Fiscal Year 05 reduction plan, we eliminated unfilled positions of eight FTEs, we have three retained but unfilled positions, and purchase revisions amounting to \$86,000. New programs include the internal audit program, the increased gambling awareness support, and the rules simplification project, which have all been initiated. In FY 05 some quality control charges were adjusted, as well as the Electronic Gaming Lab and Tribal Gaming Lab billing rates. Mr. Nunamaker added that the changes in FY 05 were done with no personnel layoffs. For FY 06, the agency will have a much more ambitious cut of just over \$1 million in three operational areas. An operations realignment cuts 3 FTEs; two have already been reassigned and a plan is in place for the third. Reductions in management and administration include a cut of 6.7 FTEs during the biennium; five of those positions have been resolved, the 0.2 will be the retirement of Mr. Nunamaker, and 1 ½ FTEs still need to be figured out. In the regulatory process simplification, 6 FTEs for reduction were identified and accomplished through reassignment to vacant positions.

Chair Niemi asked if the Deputy Director position is going to be eliminated? **Director Day** responded that the Deputy Director's position would be eliminated and the position would become a rotating assignment. Mr. Nunamaker is gradually trying to work himself out of a job. Director Day explained that even though we have been able to implement the plan without layoffs, it hasn't been without impact to employees. We have worked very hard to make sure that we have maintained our expressed intent that if employees

wanted to stay with the Commission, we could provide that opportunity, although the employee may be in a different position and compensation.

Deputy Director Nunamaker reported that over the next several months proposals will be made for changes to the rules allowing for regulatory process simplification, changes to quarterly reporting requirements, and changes to areas of staff approvals of different types of activity in an attempt to handle the approvals within the rules rather than reviewing them one at a time. The manufacture and distributor pricing and price control rules and temporary licenses rules will also be before the Commission in the coming months. Significant progress has been made in preparing to implement the 2006 budget, with more adjustments on the horizon.

Assistant Director Cass reviewed the transition between the field operations, special investigations, and criminal investigations units. The goal throughout the planning and implementation process was to meet the budget challenges and still benefit the unit. The decisions were made based on agency priorities as opposed to unit priorities. Resources were put where they were needed for proactive, risk-based regulation in the future. Cases and resources can be handled more aggressively through regular review and adjustments where needed. Redundancies can be streamlined and eliminated between the current units. These issues are looked at each time we make a decision in Field Operations, but they are certainly in line with the agency's goal and mission., which includes balance, consistency, and voluntary compliance. The consolidation includes the current Field Operations Unit that deals with compliance with gambling laws and rules in licensed establishments, Special Investigations Unit that investigates the illegal gambling activities by unlicensed entities, and the Criminal Intelligence Unit that collects and disseminates intelligence information related to both types of gambling activities.

Commissioner Ludwig asked whether those three functions are being consolidated under one supervision. **Assistant Director Cally Cass** affirmed and pointed out the organizational chart in the agenda packet and that the changes to the structure were highlighted. The Special Investigations Unit will report to Field Operations Assistant Director Cass starting February 15. The Criminal Intelligence Unit will report to Assistant Director Cass starting May 15.

Chair Niemi asked Assistant Director Cass if she thought her attendance at the FBI academy influenced how this organizational structure was changed. **Assistant Director Cass** affirmed, adding that she thought it could make a larger difference as the transition is implemented. Teams were formed to assist in the transition process. Two teams were formed that are related to criminal and special investigations. Another team will deal with the reassignment of the coordinator duties, which are those specialized positions handling nonprofit issues, manufacturer issues, card game approvals, equipment approvals, etc. The coordinator positions will be divided between Licensing and Field Operations. Another team will work on risk assessment and regulatory processes to attempt to streamline and reduce redundancy between those units that will not be combined with Field Operations. **Director Day** added that the concept is that as they

implement the details and consult directly with those staff who are actually doing the ongoing work and draw on them to help implement the new process and organization.

Julie Lies reported that the Tribal Gaming Unit has worked very closely with Special Investigations, Criminal Intelligence, and the coordinators in the past and will continue to work with them to ensure there is consistency between the groups. Ms. Lies reviewed the Electronic Gambling Lab and Tribal Gaming Unit consolidation. Effective February 15, the Electronic Gambling Lab will begin reporting directly to Ms. Lies, and a name change to Tribal and Technical Gambling Division will be incorporated. We are reevaluating our processes and hope to improve communication and sharing of information and training between the two units. Mr. Lies directed the Commissioners to the organizational structure chart, pointing out that boxes were added under each of the districts to show the number of tribes and casinos within those districts.

Dave Trujillo reviewed the three licensing groups that work very closely together with many intertwined functions – licensing services, licensing investigations, and license reporting. Currently they work under three different chains of command, Investigations, Licensing Services, and Financial Reporting. One of the factors being dealt with is that staff is decreasing and workload is increasing. The number of active licenses at December 31, 2001, was 15,889 compared to 19,029 in 2004. Plus, the licensing section of the rules manual is being examined by the Rules Simplification Team right now. In 2006 Licensing Services will have fewer staff, Licensing Investigations will have fewer staff, and Financial Reporting will have fewer staff. On February 15, those three groups will be brought under one chain of command. A steering committee is being formed to deal with the issues of changing, clarifying, inspections, procedures, etc. Sub committees may develop from the steering committee. By July 1 of this year we hope to have these three groups blended. Once the steering committee proposes some efficiencies and resource allocations, we hope to have some better understanding of how we can do a better job for our licensees, our applicants, and the Commissioners. Our goal is to build the most effective and most efficient proactive and responsible licensing program in Washington State government, where turf is not an issue and each person is encouraged to grow both professionally and individually.

Commissioner Ludwig asked Director Day whether OFM has been briefed on the processes that the Commission is going through now to reach compliance with their budget allotments? **Director Day** affirmed he has engaged in some productive conversation. He had a recent discussion with a staff member in OFM and discussed efficiency reductions, and pointed out that in this process the Commission is reducing 19 management and administrative FTEs.

Monthly Update Reports:

Director Day noted the Administrative Case Update, Seizure Update, and News Articles were provided in the agenda packet. He drew attention to the Seizure Update describing a current case the Commission has in LaCenter/Vancouver, which includes charges filed

for 14 separate cases involving over \$37,000 in cash and four vehicles. These will entail a lot of hearings, which indicates the size of the operation. It was a very successful undertaking from our investigations standpoint.

Chair Niemi called for comments from the public

Dolores Chiechi, on behalf of the Recreational Gaming Association (RGA), explained there were a couple of legislative issues not covered in the Director's Report she would like to discuss. Although they don't fall into the purvey of gambling, they will certainly impact the Gambling Commission and their licensees. One has to do with smoking bans in non-tribal facilities. The RGA and its members are concerned about the survival of the industry if a legislative compromise isn't reached. Initiative 901 was filed in November and is an all out statewide ban for smoking in all public, non-tribal facilities. The RGA has some grave concerns about the impact of the ban, and filed a lawsuit challenging the ballot title on that Initiative and requesting the Court require the reference to the exemption of tribal facilities be part of that language. That way, when voters goes into the voting booth, they are informed that it is not a smoking ban in all places, but only non-tribal facilities. Some legislators and Governor Gregoire have communicated that they are open to a compromise that would exempt establishments where minors are not allowed. The RGA and it's members, along with the Restaurant Association, support this approach. As long as gamblers who smoke have somewhere else to go to smoke and gamble, this ban is not realistic. During the Pierce County smoking ban, Commission staff conducted an analysis of how the ban affected Pierce County gambling licensees' revenues and those in surrounding communities. The RGA is requesting that the Commissioners direct its staff to conduct a similar analysis of smoking ban legislation. The Commission also directed staff during Initiative 892 to conduct an analysis of the impact that it could have on the Commission and we are asking the Commissioners to ask staff to generate that report so that the Legislators are aware of the impact to local governments, the agency, and the licensees that are currently allowed to offer designated smoking areas in their business. Ms. Chiechi relayed that the RGA is committed to supporting legislation that creates a funding mechanism for the important issue of problem gambling. The RGA remains hopeful that the voluntary support of tribal governments is forthcoming. They are concerned about the double taxation from a tax or fee imposed by the Gambling Commission and again at the state level. Ms. Chiechi added that the RGA was also apprehensive that non-tribal gaming may be taxed to make up for any shortfalls should the tribal contributions not be realized. She noted that Legislators have asked that future compact negotiations would include discussions about problem gambling contributions and Ms. Chiechi felt the issue should be broached in that regard. The RGA will be following up these requests in writing.

2. House-Banked Card Room Review:
Happy Days LLC

Dave Trujillo, Licensing Services Administrator, presented the investigative results regarding the application for a house-banked card room submitted by Happy Days LLC, doing business as Club Broadway, in Everett. He introduced William Bratton and

George Axtell, representatives for the applicant, and Monty Harmon who is a licensed service supplier. **Commissioner Ludwig** asked whether this business was formerly operated as a gambling facility? **Mr. Trujillo** affirmed that the site was previously owned by Club Broadway Entertainment Inc., doing business as Big Apple Casino. Mr. Trujillo reported that staff conducted an intensive pre-licensing investigation, as well as the pre-operational review. Based upon the licensing investigation and the pre-operational review, staff recommends Club Broadway be licensed as a house-banked card room to operate up to 15 tables in accordance with the wagering limits of WAC230-04-120.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** approving Club Broadway to be licensed as a House-Banked Card Room authorized to operate up to 15 tables with the wagering limits allowed under WAC 230-40-120. *Vote taken, the motion was approved with four votes.*

Mr. Bratton and Mr. Axtell thanked Allen Esparza, Lynn Clevenger, Terry Westhoff, and Dave Trujillo for their assistance on this project.

House-Banked Card Room Status Report

Dave Trujillo reported that there are now 91 house-banked card rooms licensed and operating. On January 24, there 95 house-banked card rooms licensed & operating. Two card rooms have closed since the date of this report, Big Apple Casino (Club Broadway) in Everett and Chips Casino in Tukwila. Mr. Trujillo informed the Commission that these licensed facilities represent about 8,609 active individual license holders. .

3. Manufacturer Reviews:

Orion Manufacturing, Inc., San Jose, California

Dave Trujillo, Licensing Administrator, reported that Orion Manufacturing Inc. submitted an application to become a manufacturer in the state of Washington. They are located in San Jose, California and have been operating since 2002. The company was formed primarily to manufacture electronic printed circuit boards. They currently plan to act as a subcontractor for licensed gambling equipment manufacturers in Washington State. Mr. Trujillo mentioned that Commission staff traveled to San Jose, California and conducted an onsite investigation. This is a very simple ownership structure, involving two people who each own 50% of the outstanding stock of the corporation. Mr. Trujillo introduced Matthew Davis, President and 50% owner.

Mr. Davis explained that they are a small contract manufacturer of about 60 staff out of San Jose that builds for OEMs. One of the OEMs the company builds for is GameTek International out of Reno. Before their company can build some of their REF bingo cards it has to get licensed through Washington State.

Commissioner Orr made a motion seconded by Commissioner Ludwig authorizing Orion Manufacturing, Inc. to be licensed as a Class B Manufacturer. Vote taken; the motion passed unanimous, with five aye votes

Stella Color, Inc., Seattle

Mr. Trujillo reported that Stella Color Inc is located in Seattle Washington and are applying to for a manufacturer license. Lynn Krinsky is the sole shareholder at 100%. Stella Color has been around since 1988, but was previously known by a different name, Communicolor Inc. The name was changed to Stella Color in 1996 and has been licensed as a special sales permit since 2001. When the corporation was asked to create table game layouts, their sales reached a level that has required her to move beyond the special sales permit to a manufacturer license. Mr. Trujillo introduced the owner, Lynn Krinsky.

Commissioner Orr made a motion seconded by Commissioner Ludwig authorizing Stella Color, Inc. to be licensed as a Class B Manufacturer. Vote taken; the motion passed unanimous with four aye votes.

4. New Licenses and Tribal Certifications

Commissioner Orr made a motion seconded by Commissioner Ludwig to approve the new licenses, changes, and Class III tribal certifications as listed on pages 1 through 17 on the approval list. Vote taken; the motion passed unanimously.

5. Other Business/General Discussion/Comments from the Public

Chair Niemi: called for public comments. There were none.

6. Executive Session to Discuss Pending Investigations, Tribal Negotiations & Litigation

At 4:40 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation. At 6:15 p.m., **Chair Niemi** recalled the public meeting and announced that Friday's meeting would commence at 9:30 a.m., and adjourned the meeting.

**COMMISSION MEETING
FRIDAY, FEBRUARY 11, 2005
AMENDED MINUTES**

Chair Niemi called the meeting to order at 9:40 a.m., at the Red Lion Hotel located in Olympia. The following members and staff were present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;**
 COMMISSIONER CURTIS LUDWIG, Kennewick;
 COMMISSIONER GEORGE ORR, Spokane;
 COMMISSIONER ALAN PARKER, Olympia;
 COMMISSIONER JOHN ELLIS, Seattle

STAFF PRESENT: **RICK DAY, Director;**
 NEAL NUNAMAKER, Deputy Director;
 CALLY CASS, Assistant Director-Field Operations;
 AMY HUNTER, Administrator-Legal;
 DAVE TRUJILLO, Acting Administrator-Licensing;
 JERRY ACKERMAN, Assistant Attorney General;
 GAIL GRATE, Administrative Assistant

Chair Niemi explained that the agenda items were going to be taken out of order.

11. Approval of Minutes - Special Meeting, December 1, 2004, Teleconference, and Regular Meeting, January 13 & 14, 2005, Seattle

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the meeting minutes of the December 1, 2005, teleconference and the January 13-14, 2005, regular meeting. *Vote taken; the motion passed with four aye votes. (Commissioner Ellis abstained because he wasn't at either meeting.)*

8. Defaults:

Adam Johnson, Card Room Employee Revocation

Administrator Amy Hunter reported that Adam Johnson worked in a security department. A purse with some cash in it had been turned in to lost and found. Mr. Johnson gave that purse to a person he knew who was not the owner and told them that they could take the cash if they chose to do so. This was shown on video tape and provided on a written statement that he made to staff. Charges were brought against him

to which he did not respond. Mr. Johnson also did not respond to two messages were left for him. By failing to respond, Mr. Johnson has waived his right to a hearing and staff requests that his card room employee license be revoked. **Chair Niemi** inquired if Mr. Johnson or a representative was present. No one responded.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to revoke Adam Johnson's license to conduct gambling activities. *Vote taken; the motion passed unanimous with five aye votes.*

10. Motion to Vacate Default Order:

Alaskan Bar & Grill, Kelso

Assistant Attorney General Sara Olson introduced **Tinamarie Buffington** of Alaskan Bar & Grill. Ms. Olson and Ms Buffington presented their cases. A transcript of the hearing is available upon request.

The Commissioners convened an executive session to deliberate the case. **Chair Niemi** recalled the public meeting.

Commissioner Parker made a motion seconded by **Commissioner Ludwig** to vacate the default order as requested by petitioner with the understanding that the petitioner must reapply and qualify for a license. *Vote taken; motion passed with four ayes.*
Commissioner Orr voted nay.

Commissioner Orr emphasized that part of the Commission's responsibility is to make sure that the state of Washington is protected from gambling. To do that the Commission has a set of rules. Although, Ms. Buffington is perhaps a victim of circumstance, she does have a certain responsibility and Commission Orr reminded Ms. Buffington that she needs to pay attention to those rules.

9. Petitions for Review:

Long Pham, Card Room Employee Revocation

Assistant Attorney General Sara Olson introduced **Robert Neathery**, a certified court interpreter for the states of Washington and California, **Attorney Michael Blue** representing the petitioner, and the petitioner **Long Pham**. Ms. Olson and Mr. Blue presented their cases. A transcript of the hearing is available upon request.

The Commissioners convened an executive session to deliberate the case. **Chair Niemi** recalled the public meeting.

Commissioner Orr made a motion seconded by **Commissioner Parker** to affirm the ALJ findings and conclusions, but to alter the penalty to a 30-day suspension. *Vote taken; the motion passed unanimously.*

12. Expiration Dates on Bingo Gift Certificates:
WAC 230-20-115

Assistant Director Cally Cass addressed WAC 230-20-115 allowing charitable/nonprofit licensees to award gift certificates as prizes. The proposed rule change eliminates the requirement of expiration dates, which conflicts with a law that was passed in the last legislative session. House Bill 3036 was intended to relieve businesses from the obligation of having to report gift certificates to the Department of Revenue as unclaimed property and to protect consumers from the practices of some retailers that deprived them of the full value of the gift certificates, such as expiration dates, service fees, and dormancy activity charges. The bill passed both the House and the Senate by unanimous votes supported by the Restaurant Association and other organizations. This rule is up for discussion only.

**13. Raffle Tickets:
WAC 230-20-335**

Assistant Director Cally Cass addressed the proposed amendments to WAC 230-20-335. Staff requested this rule to be filed on behalf of James Williams.

Charitable/nonprofit organizations may conduct raffles as a way to raise funds for their stated purpose. Operating requirements for members-only raffles are outlined in this rule, plus it offers organizations simplified procedures when all phases of the raffle are completed during a meeting of its members. Mr. Williams originally requested the rule change to increase the price of a single members-only raffle ticket from \$2 to \$10. Because the risk was not substantial and the oversight is sufficient, staff does not oppose raising the price of a single members-only raffle ticket from \$2 to \$10. Ms. Cass noted that this does not change the maximum set by the RCW of \$25. This rule is up for discussion only.

14. Other Business/General Discussion/Comments from the Public

Chair Niemi called for public comments. There were none and she adjourned the meeting at 10:55 a.m., noting the next regular meeting would be held in Seattle on March 10 and 11.

Minutes submitted by:

Gail Grate

Administrative Assistant 4